

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:12-CR-132-25

v.

HON. ROBERT HOLMES BELL

JOE CABRERA,

Defendant.

MEMORANDUM OPINION AND ORDER

Defendant Joe Cabrera has filed a motion for modification or reduction of sentence (ECF No. 1554) pursuant to 18 U.S.C. §3582(c)(2) on the basis of Amendment 782 of the United States Sentencing Guidelines, made retroactive by the Sentencing Commission.

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 782 of the United States Sentencing Guidelines reduced by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties in U.S.S.G. §§ 2D1.1 and 2D1.11. These modifications were made retroactive effective November 1, 2014. U.S.S.G. § 1B1.10.

The Probation Department filed a Sentence Modification Report (ECF No. 1605) on January 4, 2016. Because the Amended Guideline Calculation does not result in a lower guideline range, the Probation Office is not recommending a reduction in sentence under Guideline Amendment 782.

Counsel for Defendant and the Government have filed responses to the Sentence Modification Report (ECF Nos. 1624, 1626). While the circumstances precludes a reduction of sentence at this time, Mr. Cabrera wishes to preserve the issue for future consideration should the law change. The Government concurs with the Probation Department's assessment that Defendant is not eligible for a reduction of sentence.

The Court having reviewed the Sentence Modification Report concurs with its assessment that Defendant is not eligible for a reduction. An Amended Total Offense Level of 31 and a Criminal History Category III results in an Amended Guideline Range of 135 to 168 months, which is higher than Defendant's original sentence. Therefore, IT IS HEREBY ORDERED that Defendant's motion for modification of sentence (ECF No. 1554) pursuant to 18 U.S.C. § 3582(c)(2) is respectfully DENIED.

Dated: May 16, 2016

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE